

The defendant's major complaint is with the First Circuit's (arguably dictum) description of Maine's scope of *respondeat superior* and its broad acceptance of Restatement (Second) of Agency § 219(2)(d) ("aided in accomplishing the tort by the

existence of the agency relation"). Costos v. Coconut Island Corp., 137 F.3d 46, 49 (1st Cir. 1998) (discussing McLain v. Training & Dev. Corp., 572 A.2d 494 (Me. 1990)). But until the First Circuit or the Maine Law Court changes or clarifies this description, it governs, especially in a case like this where the employee's very access to the prisoner and any influence she had over him came from her employment.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendant's motion for partial summary judgment is **GRANTED** as to any claim for punitive damages and otherwise is **DENIED**.

So ORDERED.

DATED: APRIL _____, 2003

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE